

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH LEMON D IRVING,

Defendant-Appellant.

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UNPUBLISHED

September 22, 2005

No. 254387

Wayne Circuit Court

LC No. 03-012057-01

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of aggravated assault, MCL 750.81a, and sentenced to probation for one year. He appeals as of right, asserting that he was denied a fair trial by the prosecutor's misconduct in eliciting improper MRE 404(b) evidence contrary to the trial court's earlier ruling. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews preserved issues of prosecutorial misconduct case by case, examining the challenged remarks in context to determine whether the defendant received a fair and impartial trial. *People v Truong (After Remand)*, 218 Mich App 325, 336; 553 NW2d 692 (1996).

Before trial, the prosecutor sought to introduce, pursuant to MRE 404(b), evidence that defendant had sold the complainant "drugs on credit and that he owed [defendant] money for the drugs" to show, inter alia, specific intent and motive. After defense counsel objected, the parties agreed to stipulate that the complainant owed defendant approximately \$400, without any reference to drugs. At trial, however, during the cross-examination of a defense witness, the prosecutor asked, "Well, wasn't this [debt] about [defendant] selling [the complainant] drugs on credit?"

Although the challenged question was improper, reversal is not warranted. Defense counsel immediately objected, the trial court implicitly sustained the objection, and the following contemporaneously occurred:

[*Trial court*]: There's [sic] been certain questions and there's been testimony about a debt that [the complainant] may or may not have owed to [defendant].

And [the prosecutor] asked this witness a question regarding a possible basis of that debt that may or may not be owed to [defendant]. And the question itself made reference to being a drug debt.

All right. Members of the jury, you are to disregard that question. All right. As to what may be the basis of the debt. All right. And the basis of the debt, whatever it may be or not be, you are not allowed to factor that in your decision in this case. Do all of you understand that?

[Jurors]: Yes.

[Trial court]: Will you follow my instruction?

[Jurors]: Yes.

[Trial court]: [Defense counsel], are you satisfied with the instruction?

[Defense counsel]: I'm satisfied, your Honor.

Defendant did not request any further action by the trial court, and the prosecutor did not discuss the matter further. In its final instructions, the court instructed the jury that the lawyers' questions are not evidence, to decide the case based only on the properly admitted evidence, and to follow the court's instructions. Juries are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Because any prejudice caused by the prosecutor's improper question was cured by the trial court's contemporaneous cautionary instruction, defendant was not denied a fair trial.

Moreover, because defense counsel expressed satisfaction with the trial court's handling of the matter, any challenge in this regard is waived. See *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000). Consequently, there is no error to review. *Id.* at 219-220.

Affirmed.

/s/ Richard A. Bandstra  
/s/ Janet T. Neff  
/s/ Pat M. Donofrio